IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No.160 of 2003

Date of decision :-01.03.2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- 01.03.2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal No.160 of 2003

Jagdish Chandra Bhatt .....Appellant

Versus

State .....Respondent

Mr. Ajay Bisht learned Amicus Curiae for the appellant.
Mr. Sudhir Chaudhary learned A.G.A.

Hon'ble J. C. S. Rawat, J.

This criminal appeal has been filed against the judgment and order dated 07.02.2003 passed by Sri Sarvesh Kumar Gupta, the then Addl. Special Sessions Judge, Rudrapur, District U.S. Nagar in Special S.T. No.22/2001, whereby the Addl. Special Sessions Judge has convicted the appellant and sentenced him to undergo RI for ten years and to pay fine of Rs.1 lakh under section 18/20 of the N.D.P.S. Act. In default of payment of fine, the appellant of undergo R.I. for further two years.

2) The case of the prosecution, in brief, is that on 12.12.2000 Inspector-Surendra Kumar Tyagi alongwith police personnel was checking the vehicles and suspected person at Gadikote Chowki at about 5:30am. They saw two persons coming on two bicycles, out of which in one bicycle a lady was a pillion rider. When the police party stopped them, they informed the police that they were having Charas and started tendering apology. The police party intercepted them and tried to conduct a search. They were duly informed of their right of being searched before a Gazetted Officer or a Magistrate as required under section 50 of the Act but they declined that offer. The

police party tried to take public witnesses, but none came forward to be witness of the recovery. On conducting search of the appellant-Jagdish Chandra Bhatt, about 1½ kg Charas was recovered from his possession and Rs.1110/- was also recovered from the pocket of his jacket. The recovered Charas was sealed at the spot and prepared recovery memo (Ex.ka.1) at the spot with the light of torch. On the basis of recovery, check FIR (Ex.ka.8) was lodged at the police station and entry to that effect was made in the G.D. (Ex.ka.5). Thereafter, the accused, furd and recovered Charas was handed over to the police station. The site plan (Ex.ka.4) was also prepared. The sample taken from the seized article was sent for chemical examination and it was proved to be Charas. The investigation was taken up as usual which culminated into the submission of the chargesheet (Ex.ka.7).

3) The charge under sections 18/20 of the N.D.P.S. Act was framed by the trial court against the appellant. The appellant denied the charges and claimed the trial.

4) In order to prove its case, the prosecution examined as many as four witnesses. Inspector-Surendra Kumar Tyagi (PW1) and H.C.-Jageshwar Dayal (PW2) S.I. were the witnesses of recovery and arrest of the appellant. S.I.-Mukhtar Ahmad Khan (PW3) was the Investigating Officer and he submitted the chargesheet against the appellant. The prosecution has also adduced the evidence of Constable-Naresh Kumar (PW4), who took the sample taken from the seized article from the malkhana to the court and thereafter to the chemical examiner. He stated that the said sample was remained intact till it was

produced before the chemical examiner. He has further stated that no tampering was made with the said sample.

5) In the statement recorded u/s 313 Cr.P.C. the appellant denied the prosecution case and stated that he had been falsely implicated in the case.

6) The learned trial court on the basis of his appreciation of the evidence found the appellant guilty u/s 20 N.D.P.S. Act and convicted and sentenced the appellant as mentioned above.

7) I have heard Mr. Ajay Bisht learned Amicus Curiae for the appellant and Mr. Sudhir Chaudhary learned A.G.A. I have also gone through the evidence and material on record.

8) It is pertinent to mention here that the recovery was made from the rackseen bag handing on the shoulder of the appellant and it was a sudden arrest. Learned Amicus Curiae for the appellant contended that the prosecution has not produced any independent witnesses with regard to the recovery of Charas from the possession of the appellant. The police party could have obtained the independent witnesses from the locality. It had come in the evidence that there were so many houses adjoining the place of incident and the police should have obtained the public witnesses. Learned A.G.A. refuted the contention. It has come in the evidence of Surendra Kumar Tyagi (PW1) and Jageshwar Dayal (PW2) that they tried to take the public witnesses on the spot, but nobody was ready to be the witnesses of recovery. Apart this, it was a sudden

arrest. As such, the police party made the recovery from the appellant. The failure to associate the public witness in a situation like this would not affect the prosecution case in toto and the same cannot be thrown out or doubted on that ground alone. It has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are a harassed lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. Therefore, the contention advanced by the learned Amicus Curiae is not tenable.

9) Learned counsel for the Amicus Curiae has pointed out that it has come in the evidence that the said article was sent by the Sessions Judge, Udham Singh Nagar, but the analysis report says that it has been sent by the C.J.M. Learned A.G.A. refuted the contention. Perusal of the record reveals that report and other documents on record shows that the said article was sent by the Sessions Judge and letter no. and other particulars are similar which has been indicated in the letter of the Sessions Judge. It seems that due to clerical mistake the word “C.J.M.” has been written in the report. It is a mistake on the part of the chemical examiner and on this ground the appellant cannot be acquitted alone.

10) Learned Amicus Curiae for the appellant further contended that the prosecution has failed to prove that the same article which was recovered from the possession of the appellant was not produced before

the court. Learned A.G.A. refuted the contention. Perusal of the record reveals that Jageshwar Dayal (PW2) and Naresh Kumar (PW4) have proved that the article recovered from the possession of the appellant was produced before the court. No suggestion has been put either of the witnesses as to whether the seals affixed on the article had been tempered with or the same article which was recovered from the possession of the appellant was not sent to the court. The recovery has not been challenged before the court below. There is no cross examination on this point. As such, the argument advanced by the learned Amicus Curiae has no force.

11) No other ground has been raised before this me. In view of the above discussion, I am of the view that the prosecution has establishment the guilt beyond reasonable doubt against the appellant. I find that the learned trial court has rightly convicted and sentenced the appellant and there is no infirmity in the judgment passed by the trial court. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trial court are confirmed.

12) Let the lower court record be sent back to the court concerned.

(J.C.S. RAWAT, J.)

Dated 01.03.2006

LSR